

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
RULE 41, FORM 28, RULES OF)	Administrative Order
CRIMINAL PROCEDURE)	No. 2021 - <u>15</u>
)	
_____)	

On August 27, 2020, this Court adopted the proposed amendments to Rule 17.1(f)(1) and Rule 41, Form 28 of the Arizona Rules of Criminal Procedure as set forth in rule petition R-20-0005. It has come to the Court's attention that additional conforming changes to Form 28 are necessary to clarify when the use of a notary is permitted under Rule 17.1(f)(1).

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Rule 41, Form 28 of the Rules of Criminal Procedure is amended in accordance with Attachment A of this Order, effective *nunc pro tunc* January 1, 2021.

Dated this 21st day of January, 2021.

FOR THE COURT:

ROBERT BRUTINEL
Chief Justice

ATTACHMENT A

(language to be removed appears in ~~strike through~~, language to be added is underlined)

STATE OF ARIZONA Plaintiff

-vs-

Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

**TELEPHONIC
GUILTY/NO CONTEST
PLEA PROCEEDING:
JUDGMENT OF GUILT
AND CONVICTION**

Defendant states:

1. ☐ I have an attorney or ☐ I do not have an attorney and I waive my right to an attorney.
2. I have a copy of the criminal complaint in this case. I have read and understand the charges filed against me. I hereby agree to plead ☐ guilty or ☐ no contest to all the charges in the complaint.
3. I understand the nature of the charges as indicated:
 - ☐ Driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor/toxic vapor/drugs.
 - ☐ Driving or in actual physical control of a motor vehicle with an alcohol concentration of .08 percent or more within 2 hours of driving or being in actual physical control of a motor vehicle.
 - ☐ Driving or in actual physical control of a motor vehicle with an alcohol concentration of .15 percent or more within 2 hours of driving or being in actual physical control of a motor vehicle.
 - ☐ Driving or in actual physical control of a motor vehicle with any illegal drug or its metabolite in the defendant's body.
 - ☐ Driving or in actual physical control of a commercial vehicle with an alcohol concentration of .04 percent or more.
 - ☐ Other: _____.
4. ☐ I am pleading guilty or no contest to all the charges in the complaint, or
☐ I have entered into a written plea agreement and I agree to its terms.
5. I admit that if my case went to trial, the facts would support the charges against me.
6. I understand the maximum penalties to be:
 - ☐ Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 3 years probation, plus surcharges and fees.
 - ☐ Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 5 years probation, plus surcharges and fees.
 - ☐ Class 2 misdemeanor: a \$750 fine, 4 months jail, and/or 2 years probation, plus surcharges and fees.
 - ☐ Class 3 misdemeanor: a \$500 fine, 30 days jail, and/or 1 year probation, plus surcharges and fees.
 - ☐ Other: _____.
7. I understand that there are special conditions, including required minimum penalties, for the charge or charges to which I am pleading guilty or no contest, as follows: _____.
8. I understand that by pleading guilty or no contest, I am giving up the following constitutional rights:
 - a. The right to plead not guilty and require the State to prove my guilt beyond a reasonable doubt.
 - b. The right to a trial ☐ by jury ☐ by a judge.
 - c. The right to assistance of an attorney at all stages of the proceeding, including appeal. In some cases, I understand that I might be eligible for a court-appointed attorney at a reduced cost or at no cost if I cannot afford one.
 - d. The right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony.
 - e. The right to present evidence in my own behalf and to have the court compel my chosen witnesses to appear and testify free of charge.

- f. The right to remain silent, not to incriminate myself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.
- g. The right to a direct appeal.
9. My plea is voluntary and not the result of force or threats. No promises were made to me concerning the consequences of my plea or what my sentence will be, other than those contained in a plea agreement if I have one.
10. I understand that if I am arrested on a subsequent offense, I may be charged with a more serious offense and associated penalties because of this plea.
11. I understand that my guilty or no contest plea in this case may cause me to violate my probation or parole in another case.

I CERTIFY that I have read and that I understand all the above matters. I wish to give up my constitutional rights, including my right to a trial by jury and my right to an attorney, and to plead guilty or no contest to the charge(s) of:

I FURTHER CERTIFY that I have attached to this form a legible photocopy of my driver's license or other government-issued photo identification that contains my name and birth date. I understand that the court will not accept my telephonic plea if I have not attached a copy of my license or identification.

Defendant's signature: _____ Dated: _____

Defendant's Address: _____

Defendant's Telephone # _____ Defendant's Email: _____

DEFENDANT'S ATTORNEY (IF ANY)

I have explained to the defendant the nature of the charge(s) and the defendant's constitutional rights.

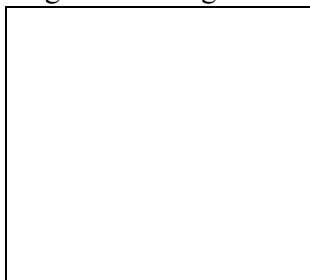
Signature of defendant's attorney (if any) and State Bar number: _____

OFFICER'S CERTIFICATION

[This certification is required only if the defendant is entering a plea of guilty or no contest for a violation of section 13-1802 (theft) or 13-1805 (shoplifting), a domestic violence offense as defined in section 13-3601, or a violation of an offense in Title 13, Chapter 14 (specified sexual offenses) or Title 28, Chapter 4 (driving under the influence).]

I CERTIFY that

1. the above-named defendant personally appeared before me,
2. the defendant acknowledged that he or she read all the foregoing information,
3. the defendant identified himself or herself to me by a driver's license or a picture ID from the State of _____, number _____; and
4. I have affixed a print of the defendant's right index finger to this document in the box below.



Fingerprint

Dated: _____

Officer Name and Badge Number

Law Enforcement Agency

Address

(_____) _____
Telephone

NOTARY

[IF THERE IS NO OFFICER CERTIFICATION AND ONE IS ~~NOT~~ REQUIRED UNDER 17.1(f)(1)(C)(i), but the court has permitted the defendant to use a notary public under 17.1(f)(1)(C)(iii), then a notary public must witness the defendant's signature.]

The defendant established their identity to my satisfaction and I personally witnessed the defendant's signature on page 2 of this form.

State of _____

County of _____

I hereby certify that _____ personally appeared before me. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 20____.

Notary Public: _____

Commission Expires: _____

(The following section is for court use only.)

ACCEPTANCE OF PLEA AND JUDGMENT OF CONVICTION

The defendant has appeared telephonically before the court on the date indicated below [] with or [] without an attorney. If defendant required an interpreter, the interpreter's name is: _____.

The court has advised the defendant and confirmed the defendant's understanding of the following:

1. The nature of the charges to which defendant is pleading guilty or no contest, and the maximum penalties;
2. The constitutional rights that defendant is waiving by pleading guilty or no contest, and that the defendant's waiver is knowing and voluntary; and
3. The right to file a petition for post-conviction relief and, if denied, a petition for review.

I have asked the defendant about any status on probation or parole, I have given the defendant an immigration advisal, and I have spoken with the defendant regarding the other matters set for above the defendant's signature. The court finds a factual basis for the plea and that the defendant has entered the plea knowingly and voluntarily and without threats or promises, other than those contained in a plea agreement, if any. The court accordingly accepts the defendant's plea.

Case # _____ For the offenses committed on _____ 20____

It is the judgment of the court that the defendant is guilty of the following offenses and is sentenced as follows:

Count 1: _____ a class ☐ 1, ☐ 2, ☐ 3 misdemeanor,
☐ petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 2: _____ a class ☐ 1, ☐ 2, ☐ 3 misdemeanor,
☐ petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 3: _____ a class ☐ 1, ☐ 2, ☐ 3 misdemeanor,
☐ petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 4: _____ a class ☐ 1, ☐ 2, ☐ 3 misdemeanor,
☐ petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 5: _____ a class ☐ 1, ☐ 2, ☐ 3 misdemeanor,
☐ petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Date: _____

Judge's signature: _____

I certify that a copy of this document was mailed to the defendant at the address shown above on this date:

_____ by (clerk's name or initials): _____.